United States Department of Labor
Employees' Compensation Appeals Board

A.A., Appellant	)	
and	)	**Docket No. 14-1155**
	)	**Issued: September 24, 2014**
DEPARTMENT OF VETERANS AFFAIRS, VETERANS HEALTH ADMINISTRATION, Dallas, TX, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA HOWARD FITZGERALD, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On April 21, 2014 appellant filed a timely appeal from an April 10, 2014 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant established a recurrence of a medical condition due to the accepted May 22, 2002 injury.

FACTUAL HISTORY

On May 22, 2002 appellant, then a 46-year-old police officer, sustained a right knee injury when he stepped from a curb and twisted his knee. On August 16, 2002 OWCP accepted

[1] 5 U.S.C. § 8101 *et seq.*

his claim for knee strain. Appellant did not claim wage loss as a result of his condition and received authorization for medical procedures, including x-rays, magnetic resonance imaging (MRI) scan, arthroscopy, braces/splints, a myelogram and orthopedic/neurological referral. He returned to work on July 2, 2002 at regular duty.

On July 1, 2002 Dr. Harold G. Weems, Jr., a Board-certified orthopedist, examined a MRI scan of appellant's right knee. He found that appellant's medial and lateral menisci, anterior and posterior cruciate ligaments and medial and lateral collateral ligaments to be intact. The bone signal of the distal femur, proximal tibia and patella were also within normal limits, as was the surrounding soft tissue. Dr. Weems stated his impression that appellant had a normal MRI scan of the right knee. In a report dated July 3, 2002, he noted that appellant's MRI scan was essentially negative and believed that the majority of pain was coming from "a bit of tendinitis on his patellar tendon." Dr. Weems stated that he would see appellant on an as needed basis.

In a report dated February 16, 2005, Dr. William F. King, a Board-certified radiologist, examined the results of x-rays of appellant's knees and compared them to a previous study of appellant's right knee dated May 23, 2002. There was no acute or recent healing or unhealed fractures or dislocations of either knee. In the right knee, Dr. King observed smooth and well-maintained articular surfaces of the femoral condyles and tibial plateaus without significant arthritis. There was a small spur on the superior pole of the right patella and two small calcifications nearby in the insertion of the quadriceps tendon to the patella. Dr. King noted another small spur on the inferior pole of the right patella, which was slightly larger than it was on the May 23, 2002 study. He observed no focal areas of bone erosion or destruction and normal and equal medial and lateral knee joint cartilage spaces. In the left knee, Dr. King noted smooth and well-maintained articular surfaces without significant arthritis, normal joint cartilage spaces and no focal areas of bony erosion or destruction. He found a small spur on the superior pole of the left patella.

On the same date, Dr. Oleg I. Zhukovskiy, a Board-certified internist, noted that appellant had degenerative changes of the shoulder and lower back, along with bilateral knee pain.

On January 8, 2014 appellant filed a notice of recurrence seeking medical treatment related to the May 22, 2002 employment injury. He did not claim wage-loss compensation and listed the date of recurrence as July 4, 2002. Appellant stated that he had been seen by his physician every six months for his knee and that his pain and restricted movements had existed since the 2002 injury.

By letter dated January 15, 2014, OWCP requested additional medical evidence from appellant to support his claim for a recurrence of his medical condition. It noted that the evidence of record was insufficient to support his claim as there was no bridging medical evidence to establish ongoing medical complications as a result of the accepted injury. OWCP stated that the MRI scan of appellant's right knee dated July 1, 2002 was normal and that the medical records revealed that he was released from medical care for his work-related condition on July 3, 2002.

On July 30, 2010 Dr. Zhukovskiy diagnosed appellant with degenerative joint disease and increased his prescription for Lortab.

On July 18, 2013 Dr. Gina C. Sims, a Board-certified radiologist, examined the results of x-rays of appellant's knees. In the right knee, she found osteopenia with mild tricompartmental degenerative changes, with a prominent enthesophyte along the extensor mechanism. Dr. Sims noted no large right knee effusion, no acute displaced fracture or dislocation and no significant patellar tilt or subluxation. She observed, "Regions of heterotopic ossification along the proximal patellar tendon could be related to old injury were degenerative changes." In the left knee, Dr. Sims found osteopenia with mild tricompartmental degenerative changes and small patellar enthesophytes. She stated her impression of bilateral mild tricompartmental degenerative changes with no acute osseous abnormality.

Appellant responded to OWCP's inquiries on February 22, 2014. He stated that his knee hurt since after the 2002 injury and continued to cause the same problems. Appellant noted that additional medical care was required because he had received care after the injury. The injury caused him to miss work and, while the injury was to his right knee, his left knee was now also in pain. Appellant stated that his medical records would bridge the gap between his date of discharge in 2002 from medical care through the present because he received medical care for his knee after the injury. He also submitted several unsigned and incomplete medical reports.

By decision dated April 10, 2014, OWCP denied appellant's recurrence claim of a medical condition. It found that the medical evidence was insufficient to establish that his current right knee condition was causally related to the May 22, 2002 employment-related injury.

LEGAL PRECEDENT

Appellant has the burden of establishing that he sustained a recurrence of a medical condition that is causally related to his accepted employment injury. To meet his burden, he must furnish medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the condition is causally related to the employment injury and supports that conclusion with sound medical rationale.[2] Where no such rationale is present, the medical evidence is of diminished probative value.[3]

OWCP regulations define a recurrence of medical condition as the documented need for further medical treatment after release from treatment of the accepted condition when there is no work stoppage. Continued treatment for the original condition is not considered a renewed need for medical care, nor is examination without treatment.[4]

OWCP's procedure manual provides that, after 90 days of release from medical care (based on the physician's statement or instruction to return as needed or computed by the claims examiner from the date of last examination), a claimant is responsible for submitting an

[2] *Ronald A. Eldridge*, 53 ECAB 218, 220 (2001).

[3] *Mary A. Ceglia*, 55 ECAB 626, 629 (2004); *Albert C. Brown*, 52 ECAB 152, 155 (2000).

[4] 20 C.F.R. § 10.5(y).

attending physician's report which contains a description of the objective findings and supports causal relationship between the claimant's current condition and the previously accepted work injury.[5]

ANALYSIS

The Board finds that appellant has not established that he sustained a recurrence of a medical condition. OWCP accepted his traumatic injury claim for right knee strain on August 16, 2002. In 2014, appellant claimed entitlement to compensation for medical treatment of his condition. The Board finds that there is insufficient medical evidence to establish that he required further medical treatment for a continuing employment-related condition.

In a report dated July 3, 2002, Dr. Weems noted that appellant's right knee MRI scan was essentially negative and determined that the majority of his pain was coming from "a bit of tendinitis on his patellar tendon." He released appellant from treatment on an as needed basis. This latter statement from Dr. Weems constituted a release from medical care under OWCP's procedures.[6] Appellant submitted no further medical evidence until January 8, 2014, when he filed his recurrence claim. His visits with physicians related to his right knee, beginning with Dr. King's report of February 16, 2005, were more than 90 days after Dr. Weems' release from medical care. Therefore, appellant must submit an attending physician's report that provides a full and accurate medical history, a description of the objective findings and supports a causal relationship between his current right knee condition and the previously accepted right knee strain.[7] He has the burden of submitting sufficient medical evidence to document the need for further medical treatment.[8] Appellant did not submit such evidence and failed to establish a need for continuing medical care.

Dr. King's February 16, 2005 radiological report is insufficient to establish appellant's claim. In the right knee, Dr. King observed smooth and well-maintained articular surfaces of the femoral condyles and tibial plateaus without significant arthritis. There was a small spur on the superior pole of the right patella and two small calcifications nearby in the insertion of the quadriceps tendon to the patella. Dr. King noted another small spur on the inferior pole of the right patella. This report merely provides an interpretation of appellant's right knee x-ray without an opinion addressing the causal relationship between any findings to his accepted injury of right knee strain. Dr. Zhukovskiy's reports of February 16, 2005 diagnosed degenerative changes of the shoulders and lower back, with bilateral knee pain. His progress notes of July 30, 2010, diagnosed appellant with degenerative joint disease, but did not offer any opinion on the

[5] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Recurrences*, Chapter 2.1500.4(b) (June 2013). The procedure manual provides, with certain exceptions, that, within 90 days of release from medical care (as stated by the physician or computed from the date of last examination or the physician's instruction to return PRN), a claims examiner may accept the attending physician's statement supporting causal relationship between appellant's current condition and the accepted condition, even if the statement contains no rationale. *Id.*, Chapter 2.1500.4(a).

[6] *See id.*

[7] *Id*.

[8] *Supra* note 2.

cause of the right knee condition or need for treatment. Medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.[9]

On July 18, 2013, Dr. Sims, a Board-certified radiologist, examined the results of x-rays of appellant's knees. In the right knee, she found osteopenia with mild tricompartmental degenerative changes, with a prominent enthesophyte along the extensor mechanism. Dr. Sims found no large right knee effusion, no acute displaced fracture or dislocation and no significant patellar tilt or subluxation. She observed, "Regions of heterotopic ossification along the proximal patellar tendon could be related to old injury were degenerative changes." This statement referencing causal relationship to an "old injury," is unclear on the issue of etiology. Dr. Sims did not address the work-related injury of May 22, 2002 or other injury to the right knee. She is equivocal, noting that the condition "could be" related to an "old injury." The Board has held that medical opinions which are speculative or equivocal are of diminished probative value.[10] Dr. Sims did not provide adequate medical rationale in addressing the relationship between appellant's current knee condition and need for treatment to the 2002 right knee strain. There are no further medical reports of record addressing his right knee condition.[11]

Appellant submitted several incomplete medical reports, containing no signature, such that their authors cannot readily be identified. The Board has found that reports lacking proper identification, such as unsigned notes, do not constitute probative medical evidence.[12] These reports are also not sufficient to establish a recurrence of his medical condition.

Appellant must submit a rationalized medical opinion addressing the causal relationship between his right knee condition in 2014 to his accepted condition of right knee strain in 2002. An award of compensation may not be based on surmise, conjecture, speculation or upon his own belief that there was a causal relationship between his condition and his employment.[13] Appellant has not submitted a rationalized medical opinion addressing causal relationship. The Board finds that OWCP properly denied his claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[9] *Michael E. Smith*, 50 ECAB 313, 316 (1999).

[10] *See S.E.*, Docket No. 08-2214 (issued May 6, 2009) (finding that opinions such as the condition is probably related, most likely related or could be related are speculative and diminish the probative value of the medical opinion); *Cecilia M. Corley*, 56 ECAB 662, 669 (2005) (finding that medical opinions which are speculative or equivocal are of diminished probative value).

[11] Appellant submitted several medical reports detailing shoulder and back conditions, but as these reports did not address his accepted right knee condition, they were of no probative value to his claim for recurrence.

[12] *R.M.*, 59 ECAB 690, 693 (2008).

[13] *Patricia J. Glenn*, 53 ECAB 159, 160 (2001).

CONCLUSION

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of a medical condition causally related to his accepted injury.

ORDER

IT IS HEREBY ORDERED THAT the April 10, 2014 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 24, 2014
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia Howard Fitzgerald, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board